

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 412 OF 1989

Gopal Mansing Bhosale.

... Appellant.

Versus.

1. Ramchandra Mansing Bhosale.
2. Gajanan Shankar Bhosale.
3. Bhausahab Mansingh Bhosale
(since deceased through LRs.)
 - 3-A) Sudarshan Bhausahab Bhosale.
 - 3-B) Mangal Anandrao Patil.
 - 3-C) Ratnabai Bhausahab Bhosale.
4. Sajjakka Shankar Bhosale.
5. Vimal Vishwas Babar.
6. Dinkar Manyaba Bhosale.
7. Maharashtra State Land Development
Bank Ltd. at Sangli.
- 7A. Gourabai Shivanna Mali,
Age: 29, Occ.: Agriculturist,
R/o. Daflapur, Taluka Jath,
Dist. Sangli.
8. Mohammad Ghudasoo Birajdar,
Adult, Occ.: Agriculturist.
R/o. Daflapur, Taluka Jath,
Dist. Sangli.
9. Vitthal Shamrao Chavan,
Age: 35, Occ.: Agriculturist,
R/o. Daflapur, Taluka Jath,
Dist. Sangli.
10. Indubai Arvind Kolekar,
Age: 30, Occ.: Agriculturist,
R/o. Mirwad, Taluka Jath,
Dist. Sangli.
11. Dattatraya Yashwant Bhosale,
Adult, Occ.: Agriculture,
R/o. Daflapur, Taluka Jath,
Dist. Sangli.

.... Respondents.

Shri A.Y. Sakhare, Sr. Advocate with Shri Siddharth Karpe
for the Appellant.

Shri S.V. Sadavarte for the Respondent No.1.

None for the other Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 24th July, 2006.

ORAL JUDGMENT.

1. This Second Appeal was admitted by this Court on 4th October 1989 by passing the following order:

"Mr.Sakhare for the Appellant and Mr.Rane for the Respondents 1 to 5. They are heard. The Appeal is admitted - the substantial question of law being whether in the circumstances of the case, the Dafalapur lands could be said to be available for partition amongst the parties. Mr.Rane to waive service for Respondents he is representing."

2. The Appellant is the original Defendant No.3.

The suit was filed by the Respondent No.1 for partition and separate possession. The contention raised by the Appellant/Defendant No.3 was that the land bearing Survey No.243 which was situated at village Dafalapur was the self acquired property and therefore, the decree for partition could not have been passed in respect of the said land. The trial Court negatived the said contention and passed a decree. An appeal was preferred by the present Appellant to the District Court. The District Court modified the decree on some other ground but upheld the finding of the trial Court that the

Appellant has failed to prove that the land bearing regular survey No.243 was a self acquired property.

3. The learned Senior Counsel appearing for the Appellant invited my attention to the finding recorded by the 1st Appellate Court and in particular the finding recorded in paragraph No.9. He submitted that the Appellate Court itself has recorded a finding that all other lands which are joint family properties situated at village Ranjani cannot form nucleus from which the land bearing Survey No.243 could have been purchased at village Dafalapur. He submitted that if this is the finding recorded by the 1st Appellate Court, the said Court could not have confirmed the finding of the trial Court. He has taken me through the findings recorded by the Courts below. The learned Advocate for the Respondent No.1 supported the impugned Judgment and Decree.

4. I have considered the submissions. The Courts below have held on the basis of the evidence on record that as two elder brothers of the Appellant were in military service, the Appellant acted as Manager of the Joint Hindu Family. It is true that the 1st Appellate Court has observed that the land at village Ranjani cannot be treated as nucleus from which the land in dispute could have been acquired. However, the 1st

Appellate Court has referred to various letters written by the Appellant to his brothers Shankarrao and Bhausahab and the money orders received by the Appellant from the said brothers. The finding of fact recorded by the Appellate Court on the basis of the Money Order coupons on record is that from time to time the Appellate received money from his two brothers. Therefore, the Courts below, in particular the lower Appellate Court, have held that the Appellant was holding the land in question in his capacity as Manager of the Joint Hindu Family on behalf of the family.

5. After having perused the records and the findings recorded by the 1st Appellate Court, I find that same are based on documentary evidence on record. There is no perversity in the said findings.

6. There is no merit in the Second Appeal and the same is dismissed with no order as to costs.

Judge.